IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18251 of 2005

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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JR DAHIYA - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR IS SUPEHIA for Petitioner

MR NAGESH SOOD AGP for Respondents

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 21/09/2005

ORAL JUDGMENT

Heard the learned advocates.

The petitioner, a retired Superintendent {Civil Surgeon}, has preferred the present petition against the Order dated 22nd September, 2003 made by the State Government.

The petitioner joined service as a Medical Officer [Class-II] on 20th December, 1971. On 27th May, 1973, he was promoted as Superintendent [Class-I] {Civil Surgeon} and was posted as Bhavnagar. On his transfer to Nadiad, he reported for duty at Nadiad on 4th May, 1989. On the same day, he tendered resignation, deposited one month's pay in lieu of notice and gave over the charge unilaterally. The petitioner's resignation, however, was not accepted. Since then, in the year 1997, the petitioner approached the State Government and sought permission to take voluntary retirement. As the petitioner's request for permission to take voluntary retirement was not granted, the petitioner approached this Court in Special Civil Application No. 2660 of 2001 and sought intervention of this Court. Pursuant to the interim order dated 1st May, 2001 [*Coram* : **M.S Shah, J.**] made on the said Special Civil Application No. 2660 of 2001, the petitioner was given posting at Dhoraji. The petitioner joined service at Dhoraji on 7th July, 2001 and on reaching the age of superannuation, he retired from service on 31st January, 2002. In the meantime, disciplinary action was initiated against the petitioner for his unauthorized absence from service from 4th May, 1989 to 6th July, 2001. The petitioner preferred Special

Civil Application No. 2889 of 2002 before this Court. By Order dated 26th February, 2002 made on the said writ petition, the State Government was directed to complete the disciplinary proceeding and to consider regularization of the period of petitioner's absence from service from 4th May, 1989 to 6th July, 2001. Pursuant to the said Order, by *impugned* Resolution dated 22nd September, 2003, the State Government has directed that the period from 4th May, 1989 to 6th July, 2001; the period during which the petitioner was absent from service, shall be considered as '*unauthorized absence and a break in service*'. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Supehia has submitted that the petitioner could not report for duty as no posting order was issued by the State Government until 7th July, 2001. The order of posting was issued on 7th July, 2001, after intervention by this Court. After the aforesaid order dated 1st May, 2001 also, the posting order was not made till 7th July, 2001. He has submitted that the petitioner is, therefore, entitled to regularization of break in service, as stated in the petition. The petitioner is also entitled to notional increments, benefit of Sick Leave, Earned

Leave, etc together with refund of the notice pay deposited by the petitioner on 4th May, 1989.

The claim made by the petitioner is too tall. The petitioner was then a Superintendent [Civil Surgeon] [Class-I]. Evidently, he resigned from service as he was transferred from Bhavnagar to Nadiad. The action of the petitioner in resigning from service and giving over the charge unilaterally without his resignation being accepted by the State Government was highly deplorable. Indisputably, as the petitioner had been carrying on private practice at Bhavnagar, he was not interested in service anywhere else but at Bhavnagar. The act of the petitioner was highly irresponsible and unbecoming of a Civil Surgeon. Since then, the petitioner did not take care about his service till he approached this Court in the year 2000. By Order dated 1st May, 2001, the State Government was directed to issue posting order within fifteen days from the date of the receipt of the order. In my view, as the petitioner was seeking posting after a long absence of some twelve years, he could not have expected the posting order for asking. Considering the conduct of the petitioner, the petitioner shall not be entitled to salary for the services not rendered between

1st May, 2001 to 6th July, 2001. As the petitioner had not rendered service during the interregnum period, his claim for leave for the said period is also unsustainable. In my view, the State Government has rightly considered the period of petitioner's absence form service as an unauthorized absence constituting break in service.

No interference is warranted. The petition is *accordingly* rejected.

{Miss R.M Doshit, J.}

*Prakash**